relation to the holding of the ship in New Zealand until the disposal of the appeal and that arise out of the delay in taking the ship to the ship repairers.

Assuming that an appeal lies in that selective way, we hold that the condition was a reasonable one in all the circumstances and that this appeal likewise should be dismissed.

The respondent is entitled to costs and will be awarded $300 to cover both appeals.

Counsel for the appellant has applied for conditional leave to appeal to Her Majesty in Council in both cases. He accepts that the application is dependent on the discretion of the court under r 2(b) of the Privy Council Rules of 1910. In our view it has not been shown that the question involved in either appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision. Accordingly, each application is dismissed. This of course does not prevent the appellants from applying to their Lordships of the Privy Council for special leave should the appellants be so advised.

Order accordingly.

Solicitors: *BM Rudkin* (Wellington); *Chapman Tripp* (Wellington).

Public Prosecutor v Tan Ho Teck

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 19 OF 1985
THEAN AND RAJAH JJ
6 MARCH 1987

Criminal Law – Murder – Intoxication – Defence of – Delirium due to acute alcoholic intoxication – Insanity caused – Acquittal – Penal Code (Cap 103, 1970 Ed), ss 85(2)(b), 302

Criminal Procedure – Statement taken from accused under s 120(1) of the Criminal Procedure Code (Cap 113, 1970 Ed) – Whether caution must be administered – Whether caution was implicit in s 120(2) of the Code – Criminal Procedure Code (Cap 113, 1970 Ed), ss 120(1), (2)

The accused was charged with causing the death of his brother by stabbing him. The evidence was that A had become upset because of his inability to pay a debt owed to his uncle and because of an argument with his brother. The accused had consumed a whole bottle of brandy and whilst intoxicated, he fatally stabbed his brother and injured his sister. The accused's defence was that he was so heavily intoxicated that he did not know what he was doing. During the trial, counsel for the accused objected to the admission of a statement taken from the accused under s 120(1) of the Criminal Procedure Code (Cap 113, 1970 Ed) on the ground that no caution was administered before the taking of the statement and that this caution was contained in or was implicit in s 120(2) of the Code.

Held, acquitting the accused on the ground of intoxication: (1) Section 120(2) of the Criminal Procedure Code does not prescribe any caution to be administered in taking the statement. The statement taken from the accused under s 120(1) of the Code is thus admissible.

(2) Having considered all the evidence, the court is satisfied on a balance of probabilities that the accused at the material time when he stabbed his brother and sister was suffering from delirium due to acute alcoholic intoxication and that by reason of the intoxication he was insane at the time of the stabbing and did not know what he was doing.

(3) The accused is to be kept in safe custody pending the order of the Minister under s 314 of the Criminal Procedure Code.

Legislation referred to
Criminal Procedure Code (Cap 113, 1970 Ed) ss 120(1), (2), 121(5), (6), 313, 314
Penal Code (Cap 103, 1970 Ed) ss 85(2)(b), 302

Geraldine Pang (State Counsel) for the Public Prosecutor.
Madan Assomull for the accused.

Cur Adv Vult

Thean J (delivering the judgment of the court): The accused, Tan Ho Teck, is charged for having committed murder by causing the death of his brother, Tan Kah Kuan, on 18 February 1984 at about 2.50 pm at Block 118, Bukit Merah View, #10-99, Singapore, an offence punishable under s 302 of the Penal Code (Cap 103, 1970 Ed). Prior to the incident, the accused was living at the flat with his younger sister, Tan Lay Tin and his younger brother, Tan Kah Kuan, the deceased. Of the three of them, the deceased was the youngest. Living with them also is a friend of the accused, one Michael Liew. At that time the accused was by occupation a casual labourer, but at the date of the incident he was unemployed; the deceased was a coffee-shop assistant. Their mother left them long ago when they were very young and their father passed away in 1983.

On the morning of 18 February 1984, at about 8 am, Tan Lay Tin ('Lay Tin') was awakened by somebody knocking at the front door and calling out loudly for the door to be opened. She recognized the voice as that of her second uncle, Tan Tiong Bin. But she was asked by the accused not to open the door; the accused said that the uncle was coming to collect money from him. Accordingly, the door was not openedd and, eventually, after waiting for about ten minutes, the uncle left. Later that morning, Lay Tin telephoned the deceased, who, on the previous night, had stayed at their aunt's flat. She narrated to the deceased that their uncle came that morning and that she did not open the door to him, as she was asked by the accused not to do so because the uncle came to collect money from the accused. The deceased told her that he would return to the flat later that day. Return he did later that morning, between 10 am and 12 noon.

After his return, the deceased, Lay Tin and the accused had a discussion on the money owed by the accused to their second uncle, and Lay Tin tried to call their uncle on the telephone with a view to speaking to him about the money but without success, as the line was

engaged. Both Lay Tin and the deceased asked the accused to repay the money owing to their uncle. In the midst of their altercations, the accused accused the deceased of stealing the former's watch, which the deceased denied. Lay Tin asked the accused not to make such wild allegations; she then searched for the watch in the flat but could not find it. The accused and the deceased were annoyed with each other; but the arguments between them did not continue.

Later the deceased asked Lay Tin whether she would like to go out with him for some food but she asked him to go first and said that she would follow as she had to wash her face. After she had her wash, she went down to the hawker stall but could not find the deceased. She then bought a packet of barbequed pork rice and a packet of fried 'beehoon' and returned to the flat. On entering the flat, she found the deceased lying in the living room and watching a videotape; the accused was lying on the bed in the bedroom. She placed the packet of rice, which she bought for the accused, on the draining board next to the wash basin and poured the 'beehoon' into a bowl, and shared it with the deceased. After they had eaten, Lay Tin and the deceased watched the videotape. Both of them were lying down on the floor while watching the videotape; the deceased was lying diagonally across the hall with his head on a pillow near the bedroom, and Lay Tin was lying beside him, next to the front door. Whilst she was watching the videotape, an idea struck her. She suggested to the accused that he should stay with her friend, Sen Cheow Kwang, for a few days. She made this suggestion because she said the accused was upset. The accused agreed to her suggestion, and thereupon she telephoned her friend, who agreed to the accused staying with him but requested her to telephone him again later that day with a view to making the arrangement. That telephone call, according to Sen who was called as a witness, was about 2.15 pm. After the telephone call, she continued lying on the floor and watching the videotape. So did the deceased.

Some time later – the period she could not recall – while she and the deceased were watching the videotape, Lay Tin suddenly heard the deceased screaming aloud and shouting, 'Cannot! Cannot!' (in Hokkien). She turned around and saw the deceased bleeding and at the same time she was stabbed by the accused with a knife. She struggled with the accused, attempting to wrench the knife from him, in the course of which, she was further stabbed twice. All the three stabs were on her abdomen. The accused did not say anything. She asked him not to stab her further, and the deceased then told the accused that he (the deceased) did not steal the watch. The accused then opened the front door and let both of them out. The deceased went out first, followed by Lay Tin. After she came out of the flat, Lay Tin sought help from the neighbour, living at the flat across the corridor. She asked her neighbour to telephone her aunt and also for an ambulance. She then ran along the corridor to the staircase near the lifts A and B and went to the floor below, the ninth floor. According to her, she went there to hide herself at the landing. There she met the accused again, who then asked her where the deceased was, to which she replied she did not know. The accused then took the flight of stairs and went down while Lay Tin took the other flight of stairs and walked up to the tenth floor. On the tenth floor, she walked along the corridor to the lift at the opposite end, lift C. There she found the deceased just lying outside the lift on his back and facing upwards. When she spoke to him, he did not answer; she then felt giddy and became unconscious. She was then sitting on the floor with her back leaning against the lift door, which subsequently opened and she fell backwards with half her body inside the lift. Her neighbour, Koh Hock Phui, who had by then come to the lift, carried her out of the lift and put her in a sitting position with her back leaning against the wall. A short while later the police arrived.

On that day at the material time, PC Lim Kee Hock was performing patrolling duty with SC Mohamed Sani bin Abdul Rahim and SC Sani bin Ahmad. At about 2.52 pm, while patrolling along Margaret Drive, they received a message from the Police Control to proceed to Blk 118, Bukit Merah View, #10-99, to attend to a case of fighting where persons had been injured. They went to Block 118 and arrived there at about 2.57 pm. They went to the tenth floor and found some blood stains in front of the flat, #10-99. They knocked at the door but there was no response. They then looked around and found the deceased and Lay Tin at the landing in front of lift C. They approached them and tried to talk to them but both of them did not respond. While SC Sani bin Ahmad stood there to preserve the scene, PC Lim and SC Mohamed Sani bin Abdul Rahim followed the trail of blood stains along the corridor, which led towards lifts A and B. They then went down to the third floor and found the accused lying on the floor and vomiting at or near the staircase. The time then was about 3.10 pm. There was a blood stain on his left leg. He was unable to talk and could not balance himself and walk steadily. PC Lim and SC Mohamed Sani bin Abdul Rahim carried him down to the void deck on the ground floor.

At about 3.14 pm, the ambulance arrived and the ambulance officer, Kamariah bte Mahmood, went up to the tenth floor and examined the deceased. She pronounced him dead. She then attended to Lay Tin and had her brought down to the ground floor where she saw the accused, who had sustained injuries on his leg. Both the accused and Lay Tin were then brought to the Singapore General Hospital.

Dr Wee Keng Poh, the forensic pathologist with the Department of Pathology at the Singapore General Hos-

pital, upon being informed by the police, went to the flat about 5.45 pm on 18 February 1984. On examining the deceased in front of lift C on the tenth floor, he certified that the deceased had died within six hours of his examination. On the following day, at the Singapore General Hospital, Dr Wee performed a post-mortem on the deceased. He found only one fatal stab wound inflicted at the anterior abdominal wall over the epigastrium and in the midline, and that wound, in his opinion, was caused by a sharp instrument, such as a knife. It was a deep wound about 10 cm deep. It went through the skin, the full thickness of the anterior abdominal wall and through the left lobe of liver from the anterior surface of the left lobe through the superior surface, across the midline and cutting the right diaphragm into the right pleural cavity and through the right lobe of the lung. The direction of the wound was from the front to the back upwards and laterally to the right. Dr Wee found no other marks of external injuries or of recent operation. The cause of death, according to him, was haemorrhage due to the stab wound of the right lung and liver. In his opinion, the wound inflicted was sufficient in the ordinary course of nature to cause death. The wound was consistent with the deceased being stabbed while he was lying on his back facing upwards.

Lay Tin, who was taken to the Singapore General Hospital, was attended to by Dr Richard Chew Kim Huat, who is a senior lecturer and consultant surgeon of the Department of Surgery in the National University of Singapore. Lay Tin sustained three stabs wounds on her abdomen and they were:

(a) 3.5 cm stab wound at the left upper abdominal wall;
(b) 2.5 cm stab wound at the left middle abdominal wall;
(c) 2 cm stab wound below the ambilicus.

All the three wounds had penetrated the abdominal wall and entered the abdominal cavity. The liver was lacerated about three cm and there were three perforations in the stomach due to the stab wounds. Emergency surgery was performed and injuries to the stomach and liver were repaired. She made good recovery during the post-operative period and was discharged from hospital well on 26 February 1984.

The accused was brought to the A & E Department at the Singapore General Hospital at about 3.36 pm and was attended to by Dr Kothagoda Henry. The doctor's finding is as follows (as stated in his report, exh P 40):

(2) On examination, he was in coma III. The pupils were dilated. His breath smelled of alcohol and there was vomitus over his chest. There was conjunctival suffusion and sinus tachycardia (rate 130 per minute). The heart sounds were dual and regular and lung fields clear. The abdomen was soft and non-tender. The only injury noted was a two cm shallow laceration of the left leg anteriorly.

(3) Blood was taken for analysis and this was found to contain 232 mg ethanol per 100 ml of blood. Staff nurse Koh Puay Keng assisted me in the taking of the blood sample.

The investigating officer in this case is Inspector Lim Bong Chang of Queenstown Police Station. He saw the accused at about 5.10 pm on 18 February 1984 at the emergency unit operation theatre at Singapore General Hospital. At that time, the accused was still unconscious and Inspector Lim placed him under arrest and instructed PC Tan Mong Teck to escort the accused to Changi Prison Hospital. When he was brought to Changi Prison Hospital, he was seen by Dr Naranjan Singh at about 10 pm and he was, according to the doctor, still unconscious and in coma III.

On 20 February 1984 at about 11.50 am, Inspector Lim went with a magistrate, Mr Ismail Hamid, to Changi Prison Hospital and there the accused was charged for murder under s 302 of the Penal Code. At about 2 pm on the same day, he was informed that the accused was discharged from Changi Prison Hospital and he directed DPC 7540 Andrew Singh to bring the accused to the station from Changi Prison Hospital. On the following day, at about 11.06 am, he went with the accused, DPC 7540 Andrew Singh and DPC 1253 Koh Thiam Siew to Blk 118, Bukit Merah View, #10-99. The accused led him to his bedroom and pointed to an empty bottle of 'Hennessy' brandy. The accused told him that he had consumed the bottle of 'Hennessy' brandy before the stabbing incident. The bottle was produced at the trial, exh P45.

On the same afternoon, at about 12.06 pm, the accused was brought back to the police station and Inspector Lim arranged for a CID interpreter, Miss Liu Chee Kuan, to act as an interpreter and recorded a statement from the accused under s 121(6) of the Criminal Procedure Code. The statement ('the s 121(6) statement') was not objected to by Mr Assomull, counsel for the accused, and was admitted. It is as follows:

> The deceased Tan Kah Kuan is my younger brother. I do not know whether or not I had murdered the deceased on the day in question as stated in the charge because I was drunk that day. I can't remember anything. I don't believe that I would do such a thing. He is my brother, how could I murder him? We stay together and I do not bear any grudge against him. Prior to the murder, I had consumed a big bottle of 'Hennessy' at home, that is the place of the murder.
>
> I really cannot recollect what had happened that day. That is all I have to say.

Four days later, Inspector Lim took a further statement from the accused under s 120(1) of the Criminal Procedure Code and the prosecution tendered the statement ('the s 120(1) statement') in evidence under s 121(5) of the Code. Mr Assomull objected to the admission of this statement on the ground that in taking this statement,

Inspector Lim did not caution the accused that he, the accused, was entitled to decline to make any statement which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture and that this caution was contained in or was implicit in s 120(2) of the Criminal Procedure Code. In his submission this provision had not been complied with and this statement was therefore inadmissible. We overruled this objection as, in our view, s 120(2) does not prescribe any caution to be administered in taking the statement. There was no suggestion by Mr Assomull that the statement was obtained by an inducement, threat or promise made to the accused.

The prosecution also produced evidence showing that the accused was admitted to Woodbridge Hospital on 9 April 1980. He was sent there by Dr BK Ng of Alexandra Hospital with a report that he was admitted to that hospital for attempted suicide by cutting both his wrists. The accused in Woodbridge Hospital was examined by Dr Lim Shin Loh, the psychiatrist, who found no evidence of mental illness or mental subnormality. He was in Woodbridge Hospital until 25 April 1980 when he was discharged.

At the close of the case for the prosecution, Mr Assomull submitted that there was no case to answer, relying on the fact that the accused was heavily intoxicated and that the accused by reason thereof did not have the intention of committing the offence for which he was charged. We disagreed with him entirely and held that the prosecution had made out a case which, if unrebutted, would warrant a conviction for the offence. We therefore called upon the accused to enter upon his defence.

The accused elected to give evidence. In his opening address, Mr Assomull put forward three defences: (i) that the accused at the time when he stabbed his brother did not have the intention to inflict the bodily injury on the deceased, as was inflicted, which caused the death of the deceased, (ii) that the accused by reason of the intoxication was insane at the time when he stabbed the deceased, and (iii) that at the time when he stabbed the deceased, he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his act in causing the death of the deceased. In his evidence the accused said that prior to the incident he was living at the flat with his younger sister, Lay Tin, and his younger brother, the deceased. He also had a friend, Michael Liew, living with him. According to him, the relationship between him on the one hand and his brother and sister on the other was good; they did discuss things together and they were all pleased with the idea of living together. The idea of living together came from him originally, and his sister and brother both agreed. They did not quarrel and in fact they were the only next-of-kin he had.

He confirmed that on the morning of 18 February 1984, his second uncle, Tan Tiong Bin, came and knocked at the front door of their flat. He knew that it was his second uncle because he peeped through the side and saw him there. He requested his sister, Lay Tin, not to open the door as his uncle came to collect money from him, and he had no money to pay his uncle. The door was not opened and his uncle then left. He was afraid of his second uncle. He was not aware that subsequently Lay Tin telephoned his younger brother, though he was aware that his younger brother had spent the previous night elsewhere. His brother did come home and the three of them had a discussion about repaying the money owing to their uncle. Both his brother and sister asked if he had found a job and said that he should repay their uncle if he had the money. He replied that he would pay something when he found a job. He said that they were satisfied with the discussion and that there was no heated argument between them. He also denied that he accused his younger brother of stealing his watch; he only asked his brother whether he had seen his watch. He was not sure of the time then. He went to his bedroom and lay on his bed. He was upset and worried as he had no money to pay his uncle and he thought of the past and of the people who might laugh at him and say that he was mad, as he had lived in Woodbridge Hospital. He then took a glass from the kitchen and a bottle of 'Hennessy' brandy on the top of the showcase in the hall; that bottle of brandy belonged to his sister. At that time he could not remember whether his brother and sister were around. He poured the liquor into a full glass and drank it. After that he went back to bed but he was not sure how long he lay down. He got up again and continued to drink the brandy until he consumed the whole of the contents of the bottle. After he had consumed the brandy, he went to the kitchen for some water as he was very thirsty. He said that at about that time, his sister suggested to him that he should stay with a friend for a few days since he had no money to pay his uncle and that he could return after he had the money. He nodded to this suggestion but he was not sure whether his sister did make the telephone call to her friend. He did not pay any attention to what his younger brother was doing. After drinking water in the kitchen, he thought of committing suicide and therefore took a knife from a drawer in the kitchen and went into his bedroom. He did not at that time notice whether his sister and brother were watching the videotape. When he was in the bedroom with the knife, he sat at the dressing table and looked at the mirror. Then he felt that a lot of people were around him, abusing him and humiliating him, which made him forget about committing suicide. He could not say who the people were. He did not at the time feel that he had the knife in his hand. The people persisted in surrounding him and refused to go away. He then chased them but was not sure where he chased

them. He then felt that he tripped and had a fall. He was not sure where he fell and did not know what he did. He heard crying afterwards which appeared to be that of his sister but he did not know why she was crying. He was not sure whether he opened the door and he was not sure also whether they left the flat. He went to the kitchen to wash his head; he had a severe headache and his head was hot. He went to the sink and placed his head below the water tap and let the water run down his head. After washing his head, he looked for his pair of spectacles in the bedroom but was not sure whether he looked for it in the sitting room. Subsequently, he went out to find out if he had caused injuries to his brother and sister; he heard crying. When he left the flat, he was not sure whether he turned left or right, but he walked and went down the stairs and saw his younger sister, whereupon he asked where his younger brother was. He could not hear what Lay Tin said to him. He continued to walk down the stairs; but he did not know if he fell down, he became unconscious. He regained consciousness only when he was in Changi Prison Hospital. When Inspector Lim brought the magistrate and informed him that he had committed the offence of murder, only then did he realize that he had killed his brother. He confirmed that he gave two statements to Inspector Lim.

He then gave evidence of his family background. He had a very unhappy childhood. When he was very young, at the age of about 13 years, his mother left the family and his father then had a woman living with him, who acted as the stepmother to him and his brother and sister. He was very badly treated by the stepmother. This was corroborated by Lay Tin. In her evidence, she said that she was even more cruelly treated by her stepmother. His uncle, Tan Kok Meng, also gave evidence and he confirmed that the accused, his brother and sister were badly treated by the stepmother. The uncle also said that the accused's father was not very responsible; at an early age he forced the accused to work and took most of the earnings from the accused. All the children were badly treated by the stepmother; they did not have food cooked by the stepmother and their clothings were not washed. In fact, he said that there was one occasion when the accused came to his grandmother's place with a lot of wet clothing bundled up. The uncle said that he knew that they were beaten up by the stepmother.

His uncle also testified that the relationship between the accused, his brother and sister was good. He said that when the accused was in jail after his conviction for rape, his brother and sister used to bring him food.

His uncle also said that when the accused was charged for rape, he raised money to engage a lawyer to defend the accused but had never asked for repayment of the money, except that on one occasion, at a family reunion dinner, the second uncle did tell the accused that he should try to repay the money to his uncle if he could.

We now turn to the medical evidence adduced on behalf of the accused which consists of principally the evidence of Dr Nagulendran, a consulting psychiatrist in private practice, who was formerly a psychiatrist at Woodbridge Hospital. Dr Nagulendran interviewed and examined the accused at Queenstown Remand Prison on 6 and 7 February 1987, and also examined the ss 121(6) and 120(1) statements and the statements produced at the preliminary inquiry. He was present throughout the trial. He prepared a report dated 9 February 1987 and an addendum thereto dated 21 February 1987. He also gave evidence before us. In his opinion, the accused, at the time when he stabbed his brother and his sister, was suffering from delirium due to acute alcoholic intoxication, and as a result he was incapable of knowing the nature of his act or that what he did was wrong; he did not know what he was doing. He explained that delirium is a mental illness and cited to us authorities from learned textbook writers in support. According to an authority which he cited, delirium is defined as 'a psychiatric syndrome characterized by a transient disorganization of a wide range of cognitive functions due to widespread derangement of cerebral metabolism'. In this case he identified first, the acute alcoholic intoxication and secondly, the features of delirium which were present in the accused. In so far as the acute alcoholic intoxication is concerned, there was ample evidence in support, namely:

(i) consumption of a large quantity of brandy in undiluted form by the accused before the time when the accused stabbed his brother and sister;

(ii) evidence of the police officers that they found the accused on the third floor, unable to talk or walk steadily and smelled of alcohol;

(iii) evidence of Dr Henry that the accused, when he was brought to the Singapore General Hospital, was heavily intoxicated, and on examination, he was found to be in coma III; his blood was taken for analysis and was found to contain 232 mg ethanol per 100 ml of blood.

On the basis of such acute alcoholic intoxication and his examination and interview of the accused, he made the finding that the acute alcoholic intoxication together with certain predisposing factors in the case of the accused produced delirium. This finding is of course based on his own inference from his interview and examination of the accused, examination of the ss 121(6) and 120(1) statements, and evidence given by witnesses. He identified the following features of delirium being present in the accused, namely:

(a) there was a clouding of consciousness; the accused was unable to recall how he stabbed his brother and sister until, all of a sudden, he realized it;

(b) the accused's experience of fear, depression, irritability and confusion;

(c) his hallucinations and illusions in that he said he saw images of people laughing at and mocking him, and

his misidentification of his brother and sister whom he stabbed;

(d) the assaultive behaviour on the part of the accused in that he used the knife to attack what he saw as images when in fact they were his brother and sister;

(e) the lucid period which the accused had, ie the period after he realized that his brother and sister were stabbed and he went to the kitchen and threw the knife into the basin and used the cloth to wipe the blood from his left leg. This lucid period continued till the time when he walked out of the flat and went down to the ninth floor when he saw his sister and when he asked his sister where his brother was. This lucid period fluctuates with the period of clouding of consciousness which is a characteristic of delirium;

(f) lastly, the accused talked very little which was a sign of impoverishment of thought and such absence of conversation is not inconsistent with delirium.

Dr Nagulendran also mentioned that there were factors in the accused's life which would make him more predisposed to having delirium upon consumption of alcohol. First, there was the broken home in which there were frequent quarrels between his father and mother, with the mother leaving home when he was very young and the father cohabiting with another woman who was regarded as the stepmother. Secondly, in 1980, he was extremely depressed when he was rejected by his girlfriend and he attempted to commit suicide. Subsequently, he was charged and convicted of rape. Thirdly, the attempt to commit suicide indicates a serious instability of the mind, and lastly, he was depressed as he was unable to pay the debt owing to his uncle. Dr Nagulendran expressed the view that the accused has a poor tolerance and with these predisposing factors he would be more vulnerable to delirium than normal persons upon his taking a vast quantity of alcohol.

Dr Nagulendran added that a person suffering from delirium also suffers from an abnormality of mind induced by disease, and such abnormality of mind substantially impairs his mental responsibility for his act.

Next, we have Professor Yeoh Teow Seng of the Department of Pharmacology at the National University of Singapore. He gave evidence on how the body handles alcohol and on the different stages of blood alcohol concentration. He said that coma I, II and III describe different levels of consciousness or unconsciousness. The progress from coma I to coma III is a gradual process. At the stage of coma III, the person would become unconscious and can only be awakened by some pain; at the stage of coma II, the person is unconscious but he can be awakened. At the stage of coma I, the person is merely in an intoxicated state and would be unstable on his feet. He said that at coma I, a person would be irrational and have a delirium or hallucination and also at that stage, all his inhibitions would be removed and his innate nature and character is manifested.

The prosecution called Dr Chew Seck Kee, the psychiatrist in charge of Woodbridge Hospital, to give rebuttal evidence. Dr Chew examined the accused on 27 February 1984, and he gave a report dated 9 March 1984 to the effect that the accused was not of unsound mind and was fit to stand trial. According to him, the accused was able to recall all the events up to the time he went to the kitchen and took the knife. The accused even remembered his sister telling him that she would have to go to the neighbour to call for an ambulance and he also remembered how he went to the kitchen, washed his head and took a cloth and wiped his wound, and thereafter, went to look for his spectacles. In the opinion of Dr Chew, the essentials of delirium, apart from clouding of consciousness, are disorientation and impairment of memory. In this case, as the accused is capable of recalling all the details mentioned and discriminated his brother and sister and even remembered such a thing as calling of the ambulance, he had no memory disturbance or impairment. He appeared to Dr Chew to be conscious and to have full orientation of his surroundings with no amnesia of events before or after the stabbing. In view of the things he could remember, his conduct is not consistent with someone who had suffered delirium. Dr Chew therefore came to the conclusion that at the time of stabbing his brother and sister, the accused was not suffering from delirium and was sane. Dr Chew is also of the opinion that the accused was not suffering from any abnormality of mind that substantially impaired mental responsibility for the act in causing the death of his brother.

Dr Chew did concede that the accused with his predispositions could have delirium after consuming a bottle of brandy; that the accused is more prone to depression because of his predispositions, and that delirium can occur in a person having such predispositions and being prone to depression. He also conceded that a person suffering from delirium can get into a state of clouding of consciousness as quickly as he gets out of it, and that the period of lucidity would fluctuate. The clouding of consciousness can be very brief and when consciousness returns he becomes aware of his surroundings; he would be able to be aware of what he did before and outside the period of clouding of consciousness. According to Dr Chew, the predisposing factors are these: (i) extremes of life – youth and age; (ii) head injury; (iii) immaturity of the brain; (iv) condition reducing blood supply to the brain; (v) intense fear and anxiety; (vi) intense depression and (vii) condition of the brain. One or other of the factors together with alcohol or disease would be enough to cause delirium. Alcohol precipitates delirium.

We entertained some reservations on Dr Chew's diagnosis of the accused. First, in so far as his medical

report of 9 March 1984 is concerned, it is not of much assistance to us. That report was prepared by him, after his examination of the accused, for the purpose of determining whether the accused was or was not of unsound mind and fit to stand trial. The examination was not directed towards finding out whether the accused at the time when he stabbed his brother and sister was suffering from delirium due to acute alcoholic intoxication. That was not his fault as he was not asked to make an assessment on that aspect. At any rate, he could not have made such an assessment at that time as the report of Dr Kothagoda Henry was then not available, though presumably he could have obtained the necessary information from Dr Henry at the time when he wrote the report. Secondly, apart from examining the accused in March 1984, he did not appear to us to have made a subsequent thorough examination and a considered re-assessment of the accused to determine whether he was suffering from delirium at the time when he stabbed his brother and sister. Here again Dr Chew was not asked to carry out such an examination and re-assessment. This, we consider, is a lapse on the part of the prosecution. On the basis of the information available, the prosecution should have been alive to the likelihood that s 85(2)(b) of the Penal Code would be invoked by the defence, and should have then requested Dr Chew to make a thorough re-examination of the accused and re-assessment of the mental condition of the accused at the material time. As it is, we find that Dr Chew in giving evidence before us was doing so on the basis of his clinical notes made by him in March 1984. Not unnaturally, he was extremely defensive on the finding he made or the lack of finding necessary to support his view. It seems to us also that his view of the accused's mental condition at the material time was, to a certain extent, coloured by the s 120(1) statement of the accused and the accused's previous medical record at Woodbridge Hospital. He very candidly admitted that he was influenced by that statement and that he would have been more inclined to believe the accused if he had not had the accused's previous record.

Dr Nagulendran's opinion that at the material time the accused was suffering from delirium was based on his inference from (i) the facts as he found them; (ii) the statements made by the accused, both the s 121(6) statement and the s 120(1) statement made by the accused to Inspector Lim on 21 and 25 February 1984 respectively and (iii) statements made to him by the accused when the latter was examined by him. In this connection, we find Dr Nagulendran's report slightly unsatisfactory in one respect: he attributed too readily to the accused the latter's subjective experience of 'feeling of confusion, terror and irritability' which he identified as some of the features of delirium. There was not much evidence of the 'feeling of confusion, terror and irritability' on the part of the accused at the material time. As for hallucinations and illusions which the accused said he experienced, we note that the accused made no mention of these in the s 121(6) statement. However, Dr Nagulendran had given an explanation which we accept. At the time of the s 121(6) statement, the accused only came out of coma shortly, and his memory subsequently improved as is evidenced by the s 120(1) statement where he said he saw 'many images around' him and humiliating him, after he had consumed the brandy. It is significant that at that stage he had not as yet been examined and interviewed by any psychiatrist in relation to the incident. The accused also mentioned his experience of hallucinations and illusions to Dr Chew subsequently; there he used the words 'strange devils', as recorded by Dr Chew. Having considered all the evidence before us, we accept the accused's evidence that he experienced hallucinations and illusions, and we accept the opinion of Dr Nagulendran.

There are uncontroverted facts which appear to us to support the findings of Dr Nagulendran. First, prior to the incident the accused, the deceased and Lay Tin were living together at the flat. There was no friction or enmity between the two brothers and between the accused and Lay Tin. There was evidence that the relationship between the accused and the deceased was good. According to Lay Tin, on the morning of 18 February 1984, after the deceased had returned to the flat there was a heated exchange of words which arose out of two matters: (i) the deceased requesting the accused to repay the money owing to the uncle, and (ii) the accused accusing the deceased of stealing the watch. That heated exchange of words, however, did not continue or accelerate into any fight or exchange of blows. According to Lay Tin, it did not develop into a serious situation. Secondly, the accused consumed a large quantity of brandy undiluted – nearly a full bottle. That bottle of brandy belonged to Lay Tin and was on top of the showcase in the hall. The accused took it into his room and drank the whole of the contents thereof. We accept the evidence of the accused that he started to drink the brandy before the stabbing and had consumed the contents of the bottle before the incident. He must have started to drink the brandy at the time when Lay Tin was having a wash in the kitchen just before she went out to get some food or when she went out. If Lay Tin had seen him taking the bottle into his room she would probably have objected as, according to her, a few days earlier the accused consumed some brandy from that bottle and she admonished him for so doing without her permission; and Lay Tin did not see the accused taking the bottle into his room or drinking the brandy. Thirdly, he must be very depressed and worried that afternoon as he could not repay the money owed to his uncle, and that was apparent to Lay Tin who suggested to him to stay with her friend for a few days and took the initiative of telephoning her friend for that purpose. Fourthly, the stabbing took place all of a sudden for no rhyme or reason; it was not preceded immediately by any quarrel between the accused and the

deceased. The earlier heated exchange of words took place before lunch two or three hours earlier. There was no apparent motive or reason for the stabbing. He not only stabbed his brother but also stabbed his sister; he stabbed her three times. When he stabbed her he did not utter any words. There was no heated exchange of words between him and his sister that morning. Lastly, after stabbing his brother and sister he let them leave the flat. He did not hide the knife or wipe all the blood on him; he did not run away. When he met his sister on the ninth floor, he merely asked where his brother was and then took the flight of stairs and walked down. All these seem extremely irrational.

At the time when he stabbed his brother and sister he must have been very heavily intoxicated; he must then be in an advanced state of coma I. We accept the evidence of the accused that after the stabbing he went to the kitchen, washed his head under the tap and then went out of the flat and met his sister on the ninth floor. When PC Lim and SC Mohamed Sani bin Abdul Rahim found him on the third floor, he was wet. At that point of time his condition must be on the verge of reaching coma II; he was then vomiting and could not walk steadily or talk, and when he was carried to the void deck on the ground floor he was unconscious – he was then at least in coma II. And when he was brought to the Singapore General Hospital, Dr Henry found him in coma III.

Having considered all the evidence before us, we are satisfied on the balance of probabilities that the accused at the material time when he stabbed his brother and sister was suffering from delirium due to acute alcoholic intoxication and that by reason of the intoxication he was insane at the time of stabbing and did not know what he was doing. In view of this, it is unnecessary for us to consider the other defences, namely: (i) that the accused by reason of his intoxication did not form the specific intention of committing the offence on which he was charged, and (ii) that the accused was suffering from an abnormality of mind induced by disease or injury which substantially impaired his mental responsibility for his act in causing the death of the deceased.

Accordingly, pursuant to s 313 of the Criminal Procedure Code, we find that the accused did on 18 February 1984 at about 2.50 pm at Blk 118, Bukit Merah View, #10-99, Singapore, stab and cause the death of his brother, Tan Kah Kuan, but he was, by reason of unsoundness of mind at that time, incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. We order that the accused, Tan Ho Teck, be kept in safe custody pending the order of the Minister under s 314 of the Criminal Procedure Code.

Order accordingly.

Solicitors: *Assomull & Partners.*

Reported by *Ng Sheau Jiuan*

BRUNEI REPORTS

Carabao Exports Pty Ltd v Online Management Consultants Sdn Bhd & Ors

HIGH COURT (BANDAR SERI BEGAWAN) – CIVIL SUIT NO 331 OF 1987
GODFREY J
28 JUNE 1988

Civil Procedure – Judgment on admissions – Application for – Whether court can give judgment on alleged admission not admitted to by defendant – Requirement of clear admission of all facts, not evidence of some facts – Principles applicable

The plaintiff entered into a contract with the defendants for the sale of cattle. A dispute arose between the parties and the plaintiff filed the present application for judgment on admissions. The plaintiff contended that as it had already obtained judgment against the first defendants, the court should treat the third defendant as having admitted the plaintiff's claim as the third defendant was in partnership with the first defendants. However, this allegation of partnership was not accepted by the third defendant. The second contention of the plaintiff is that since the third defendant had collected the cattle without tendering the shipping documents to the shipping agents and there was an admission in the form of an indemnity given by the third defendant to the shipping agents, the plaintiff's application for judgment should be allowed.

Held, dismissing the application: (1)The court cannot try on this interlocutory application the question of partnership or no partnership and it is impossible for the court to give judgment on the alleged admission based on this ground.

(2) The instruments of delivery evidence receipt by the consignee, whose signature appears thereon, of the cattle but in no way do they constitute the sort of admission on which a judgment on admissions can be obtained.

(3) The admission must be a clear admission of all, and not simply evidence of some, of the facts upon which the plaintiff relies to establish his cause of action. In the circumstances of this case, there is no such admission.

Case referred to
1 *Ellis* v *Allen* [1914] 1 Ch 904 (refd)

David Clidero for the plaintiff.
Norila Abu Hassan for the second and third defendants.

Cur Adv Vult

Godfrey J: This is an application for judgment on admissions. The plaintiff, Carabao Exports Pty Ltd, entered into a contract for the sale of cattle. The buyer (or one of the buyers) was one Hj Mohamad bin Hj Bakar, ('Hj Mohamad') who is named as the third defendant in the action and who trades as sole proprietor of Sharikat Termaju Abadi ('STA'), which is named as the second defendant in the action. STA is sued as a firm but the name of a person who is a party in more than one capacity must be inserted only once on the record: see the note in *The Supreme Court Practice 1988*, 15/1/4. Since the second and third defendants are the same person, the second defendant ought to be deleted and the third